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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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*Ex parte* GUS LOPEZ and JOEL R. SPIEGEL

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Appeal 2009-006281
Application 10/664,820
Technology Center 3600

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Before HUBERT C. LORIN, JOSEPH A. FISCHETTI, and BIBHU R. MOHANTY, Administrative Patent Judges.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Gus Lopez, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1, 3-10, 62, 65, 66, and 68-71. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

We AFFIRM.[1]

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

> 1. A method in a computer system for generating transaction price data for an item, the method comprising:
>
> providing an item classification/attribute mapping data structure that maps item classifications to attributes, each item classification mapping to a set of attributes specific to that item classification;
>
> receiving a selection of an item classification from a user's computer system;
>
> identifying the set of attributes specific to the selected item classification by retrieving the set of attributes from the item classification/attribute mapping data structure;
>
> providing a display of an indication of the identified attributes to the user's computer system;
>
> receiving an input value for at least one attribute within the set of identified attributes from the user's computer system;
>
> retrieving records of transactions for items that are classified within the selected item classification and that match the received input value of the one or more identified attributes;
>
> analyzing the retrieved records to generate transaction price data for the item;
>
> and
>
> sending to the user's computer system the generated transaction price data as a suggested bid price in an auction.

The Examiner relies on the following as evidence of unpatentability:

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[1] Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed Sep. 6, 2007) and Reply Brief ("Reply Br.," filed Feb. 13, 2008), and the Examiner's Answer ("Answer," mailed Mar. 20, 2008).

| | | |
|---|---|---|
| Mori | US 6,044,363 | Mar. 28, 2000 |
| Ching | US 6,078,901 | Jun. 20, 2000 |
| Odom | US 6,393,426 B1 | May 21, 2002 |
| Fisher | US 6,411,960 B1 | Jun. 25, 2002 |
| Walker | US 6,415,264 B1 | Jul. 2, 2002 |
| Boesjes | US 6,799,165 B1 | Sep. 28, 2004 |

Claims 1, 3, 6, 8, 9, 62, 65, 66, and 68-71 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fisher and Walker.

Claim 4 is rejected under 35 U.S.C. §103(a) as being unpatentable over Fisher, Walker, and Mori.

Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over Fisher, Walker, and Ching.

Claim 7 is rejected under 35 U.S.C. §103(a) as being unpatentable over Fisher, Walker, and Boesjes.

Claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over Fisher, Walker, and Odom.

## ISSUE

Did the Examiner err in rejecting the claims under 35 U.S.C. §103(a) as being unpatentable over at least Fisher and Walker because (a) Walker's price data is sent to a seller's rather than a user's computer and (b) Walker's price data is not a "suggested bid price in an auction" (claim 1)?

## FINDINGS OF FACT

We rely on the Examiner's factual findings stated in the Examiner's Answer. Additional findings of fact may appear in the Analysis below.

ANALYSIS

*The rejection of claims 1, 3, 6, 8, 9, 62, 65, 66, and 68-71 under 35 U.S.C. §103(a) as being unpatentable over Fisher and Walker.*

The Appellants argued claims 1, 3, 6, 8, 9, 62, 65, 66, and 68-71 as a group (App. Br. 6-12). We select claim 1 as the representative claim for this group, and the remaining claims 1, 3, 6, 8, 9, 62, 65, 66, and 68-71 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Examiner's position is that Fisher discloses all the claim limitations but for the last 4 steps recited in claim 1 (i.e., the "receiving," "retrieving," "analyzing," and "sending" steps) for which Walker is relied upon. Answer 4-5. According to the Examiner it would have been obvious to one of ordinary skill in the art to combine the Fisher and Walker disclosures and thereby arrive at the claimed invention.

The Appellants disagree for various reasons.

"First, Walker's price data is sent to the seller's computer, while Appellants' transaction price data is sent to the user's (i.e., buyer's) computer system." App. Br. 9. We are not persuaded by this argument. We do not see, and the Appellants do not fully explain, the difference between Walker's "seller" computer and the claimed "user" computer. Simply identifying a computer as a "user" computer does not, without more in terms of structure, distinguish it from a "seller" computer. Moreover, the fact that someone would use Walker's "seller" computer necessarily means it is also an "user" computer as that claim term is reasonably broadly construed. (We find no basis in the claim or in the Specification for narrowing the scope of the claim term "user" to "buyer" as the Appellants have argued.)

"Second, Walker's price data does not correspond to Appellants'

'suggested bid price in an auction.'" App. Br. 9. See also Reply Br. 4-5. We are not persuaded by this argument either. We do not see, and the Appellants do not fully explain, the difference between Walker's price data and "the generated transaction price data as a suggested bid price in an auction" (claim 1). Simply identifying price data as being "a suggested bid price in an auction" does not, without more in terms of structure, distinguish it from Walker's price data. To the extent the Appellants mean to argue that the data generated via the claimed method is provided with sufficient information for one of ordinary skill in the art to understand that the claimed price data *is* "a suggested bid price in an auction," the argument would nevertheless still not be a persuasive one because, absent evidence of a structural distinction (of which there is none on this record), the difference between Walker's price data and the claimed price data as a "suggested bid price in an auction" would merely be one of nonfunctional descriptive material which, as such, would not be patentably consequential.

Lastly, the Appellants argue that the Examiner has failed to provide an apparent reasoning to combine the Fisher and Walker disclosures to arrive at the claimed method. App. Br. 12. We disagree. The Examiner addressed every limitation in the claim and showed where in the cited prior art, via column and line number, where these limitations are disclosed. Then the Examiner explained why one of ordinary skill in the art would have found it obvious to the combine the disclosures to arrive at the claimed method. See Answer 4-5. We are satisfied the Examiner has made out a prima facie case of obviousness with the requisite reasoning.

Thus, the Appellants have the burden on appeal to the Board to

demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of prima facie obviousness or by rebutting the prima facie case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). In that regard, the Appellants simply criticize the Examiner's explanation of why one of ordinary skill in the art would have found it obvious to the combine the disclosures to arrive at the claimed method as being "not a reasoned explanation" (App. Br. 12). But the logical underpinning of that explanation has not been challenged. Furthermore, it remains that the Examiner found, without error, all the elements of the claimed method to be disclosed in the cited prior art. "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 415-416 (2007). In that regard, there is insufficient evidence on the record of an unexpected result from the combination of these familiar elements as claimed.

*The rejection of claim 4 under 35 U.S.C. §103(a) as being unpatentable over Fisher, Walker, and Mori.*

*The rejection of claim 5 under 35 U.S.C. §103(a) as being unpatentable over Fisher, Walker, and Ching.*

*The rejection of claim 7 under 35 U.S.C. §103(a) as being unpatentable over Fisher, Walker, and Boesjes.*

*The rejection of claim 10 under 35 U.S.C. §103(a) as being unpatentable over Fisher, Walker, and Odom.*

We also shall sustain the standing 35 U.S.C. § 103 rejections of

dependent claims 4, 5, 7, and 10 since the Appellants have not challenged such with any reasonable specificity, thereby allowing claims 4, 5, 7, and 10 to stand or fall with parent claim 1 (see *In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987)). The Appellants have relied on the arguments raised in challenging the rejection of claim 1, which arguments have been found unpersuasive as to error in the rejection. App. Br. 13-15.

## DECISION

The rejection of claims 1, 3-10, 62, 65, 66, and 68-71 is affirmed.

AFFIRMED.

MP